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## EXPRESS MAIL CERTIFICATE

"Express Mail" Label No. : EV 740 582 135 US

Applicant(s) : Adnan M.M. Mjalli et al.

Serial No. : 10/091,609

Patent No. : 7,087,632

Title : Benzimidazole Derivatives as Therapeutic Agents

Filing Date : March 5, 2002

Issued : August 8, 2006

Examiner : Laura Stockton

Group Art Unit : 1626

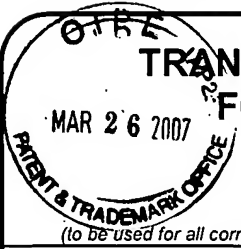
Atty. Docket : TTP 2001-07

Type of Document(s) : Express Mail Certificate;  
Transmittal Form;  
Credit Card Payment Form PTO-2038 for \$1,095;  
Notification of Loss of Entitlement to Small Entity  
Status Under 37 CFR 1.27(g)(2) and Notification of  
Error in Payment as a Small Entity Status Under  
37 CFR 1.28(c) (5 pages); and  
Return Postcard

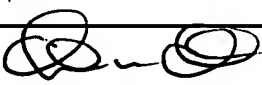
I hereby certify that the documents identified above are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below and are addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Sue H. Memory (signature)  
Sue H. Memory

Date Mailed: March 26, 2007

 <p><b>TRANSMITTAL FORM</b></p> <p>(to be used for all correspondence after initial filing)</p>	Application Number	10/091,609, Patent No. 7,087,632
	Filing Date	March 5, 2002, Issued August 8, 2006
	First Named Inventor	Adnan M.M. Mjalli et al.
	Art Unit	1626
	Examiner Name	Laura Stockton
Total Number of Pages in This Submission	Attorney Docket Number	TTP 2001-07

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): See Remarks
<b>Remarks</b> Express Mail Certificate EV 740582135 US; Credit Card Payment Form PTO-2038 for \$1,095; Notification of Loss of Entitlement to Small Entity Status Under 37 CFR 1.27(g)(2) and Notification of Error in Payment as a Small Entity Status Under 37 CFR 1.28(c) (5 pages); and Return Postcard		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Kilpatrick Stockton LLP		
Signature			
Printed Name	Charles W. Calkins		
Date	March 21, 2007 3/26/07	Reg. No.	31,814

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Adnan M.M. Mjalli, et al.  
Serial No. : 10/091,609  
Patent No. : 7,087,632  
Filing Date : March 5, 2002  
Issued : August 8, 2006  
Title : Benzimidazole Derivatives as Therapeutic Agents  
Examiner : Laura Stockton  
Group Art Unit : 1626  
Atty. Docket : TTP 2001-07

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Notification Of Loss Of Entitlement To Small Entity Status Under 37 CFR 1.27(g)(2)**  
**and**  
**Notification Of Error In Payment As A Small Entity Status Under 37 CFR 1.28(c)**

Sir:

This paper is being filed pursuant to 37 CFR 1.27(g)(2) and 37 CFR 1.28(c).

37 CFR 1.27(g)(2) states:

*(g) (2) Notification of loss of entitlement to small entity status is required when issue and maintenance fees are due. Notification of a loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity as defined in paragraph (a) of this section is no longer appropriate. The notification that small entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the small entity amount is not sufficient notification that small entity status is no longer appropriate.*

Adjustment date: 03/28/2007 SLUANG2 10091609 03/28/2007 SLUANG1 00000003 503216 10091609  
06/05/2006 DTERRY 00000032 503216 10091609 01 FC:2501 700.00 CR 01 FC:1801 395.00 DA 395.00 OP

Adjustment date: 03/28/2007 SLUANG1  
08/26/2004 HVUONG1 00000102 503216 10091609  
01 FC:2801 385.00 CR

03/28/2007 SLUANG2 00000002 503216 10091609 700.00 DA 700.00 OP  
01 FC:1501

37 CFR 1.28(c) states:

*c) How errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:*

*(1) Separate submission required for each application or patent. Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b).*

*(2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.*

*(i) Calculation of the deficiency owed. The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;*

*(ii) Itemization of the deficiency payment. An itemization of the total deficiency payment is required. The itemization must include the following information:*

*(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;*

*(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;*

*(C) The deficiency owed amount (for each fee erroneously paid); and*

*(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.*

*(3) Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.*

In accordance with the above-identified rules, Applicants present the following relevant facts.

### **Facts**

When this application was filed on March 5, 2002, each of the inventors was under an obligation to assign all of their rights in the application to TransTech Pharma ("TransTech") and assignments were subsequently recorded with the United States Patent and Trademark Office (USPTO). Entitlement to small entity status was asserted, and the application was accorded small entity status by the USPTO.

On July 27, 2005, the first notice of allowance was mailed for the application, and on September 13, 2005, final fees of \$1,000 were paid at the small entity rate, which represents the total of the issue fee amount of \$700 and publication fee of \$300.

After the first issue fee was paid, a Petition to Withdraw from Issue and Request for Continued Examination (RCE) were filed on November 10, 2005. Fees associated with the RCE were paid at the small entity rate of \$395.

A second Notice of Allowance was mailed for the application on December 1, 2005, and by letter dated February 24, 2006, Applicants requested the previously paid issue fee be applied towards the second issue fee.

After the second issue fee was paid, it was discovered that TransTech did not qualify for small entity status when the first issue fee was paid on September 13, 2005. In other words, TransTech became a large entity after the application was filed on March 5, 2002, but prior to

payment of the first issue fee on September 13, 2005, and this fact was only discovered by TransTech after payment of the first and second issue fees.

**Remarks**

In accordance with 37 CFR 1.27(g)(2), notification of loss of small entity status must be given to the USPTO when paying the issue fee. Applicants are notifying the USPTO of the loss of entitlement to small entity status in the application.

In accordance with 37 CFR 1.28(c), Applicants respectfully request that the erroneous payment of the issue fee at the small entity rate be excused.

In accordance with 37 CFR 1.28(c)(2), Applicants respectfully submit that the deficiency owed to the USPTO is \$1,095, which represents the difference between the large entity issue fee of \$1,400 and the small entity issue fee of \$700, and the difference between the large entity RCE fee of \$790 and the small entity fee of \$395. Enclosed is Form PTO-2038, Credit Card Payment Form, authorizing payment of \$1,095, which represents the deficiency in payment when the issue fee and RCE fee were paid.

In accordance with 37 CFR 1.28(c)(2)(ii)(A-D), the following provides an itemized list of the deficiency payment:

Type of Fee Erroneously Paid	Current Fee Amount for Non-Small Entity	Small Entity Fee Paid	Date Paid	Deficiency Owed
Issue Fee	\$1,400.00	\$700.00	02/24/2006	\$700.00
RCE	\$790.00	\$395.00	09/13/2005	\$395.00
<b>Total Deficiency Owed:</b>				<b>\$1,095.00</b>


Pursuant to 37 CFR 1.33(b), a patent practitioner or recorder who is appointed in compliance with 37 CFR 1.32(b) has signed this document.

Applicants believe that no additional fee other than the fee discussed above is necessary, however, should a fee be deemed to be necessary, the Commissioner is hereby authorized to charge any fees required by this action or any future action to Deposit Account No. 16-1435.

Should the Examiner have any questions relating to the instant application, the Examiner is invited to telephone the undersigned at (336) 841-0300 (Ext. 159) to discuss any issues.


Respectfully submitted,

Date: March 21, 2007

  
Samuel B. Rollins (Reg. No. 52,180)

TRANSTECH PHARMA  
4170 Mendenhall Oaks Pkwy, Suite 110  
High Point, NC 27265  
Phone: (336) 841-0300, Ext. 159  
Facsimile: (336) 841-0310

Date: 3/26/07

  
Charles W. Calkins (Reg. No. 31,814)

KILPATRICK STOCKTON LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
Phone: (336) 607-7315  
Facsimile: (336) 607-7500